

A.R.
EX
14
90-03

1895

SECOND REPORT OF THE SPECIAL COMMITTEE OF THE SENATE
ON THE CLAIMS OF THE UNIVERSITY AGAINST THE LATE
PROVINCE OF CANADA.

2. CLAIM IN RESPECT OF LOANS TO UPPER CANADA COLLEGE.

To the Senate of the University of Toronto:

The Special Committee of the Senate appointed to investigate and report on the claims of the University against the late Province of Canada, as specified in the order of reference, dated the 11th January, 1895, present the following as a Separate Report on the University's claims in respect of certain loans made to Upper Canada College out of the trust moneys of the University Endowment.

1. From various Parliamentary Returns, and the early records of the University, your Committee find that the University Council, prior to the opening of the University, advanced moneys by way of loans to Upper Canada College, between 1829 and 1843, to pay (1) the cost of erecting the College buildings and the residences for the Masters; (2) the expenses of bringing out from England the Masters for the College; and (3) the annual overdraft or deficiency in income, so as to make up sufficient to pay the salaries of the Masters and the other yearly expenses of the College.

2. There is nothing in the University records prior to June, 1831, authorizing these advances or loans to Upper Canada College. In response to an enquiry of the House of Assembly, in 1835, as to the authority under which the advances had been made, the then Bursar gave the following explanation: "The late General Board of Education was requested by the Lieutenant-Governor to undertake, with his express sanction, the entire management attending the erection of the buildings for Upper Canada College; and the Treasurer of the College, [who was also Bursar of the University], was authorized by the Board to temporarily make use of the Board's funds in his hands, until those of King's College were enabled to repay the same, to which arrangement the University Council gave their assent." (See Appendix to Journals, 1836, No. 64, p. 6.)

3. In the Minutes of the University Council of 18th June, 1831, we find the first reference to the loans which had been previously made to Upper Canada College. At a meeting of the Council, held on that day, a communication from the Lieutenant-Governor's Secretary was read, enclosing a copy of a letter to the Commissioner of Crown Lands, informing him that 66,000 acres had been appropriated by the Crown under an Order in Council, as an endowment for Upper Canada College, and intimating that "as certain expenses incurred by the Trustees of Upper Canada College, had been defrayed from the funds of King's College," he was to pay the proceeds of the sales to the Bursar of the University. The University Council in reply requested that such portion of the 66,000 acres as would replace the advances made, and to be made, to Upper Canada College, should be conveyed to the University.

At a subsequent meeting of the Council, held on the 28th July, 1831, a letter from the Lieutenant-Governor was read suggesting that the Council's proposition should be varied as follows: "That King's College should hold in trust 20,000 acres of the lots ordered by His Majesty's Government to be set apart for the support of Upper Canada College, until all sums advanced by King's College shall be repaid to that Corporation." The University Council consented to this varia-

tion, on the condition that the 20,000 acres should be granted by patent to the University, to hold upon the trusts mentioned in His Excellency's letter.

At the same meeting a further letter from the Lieutenant-Governor was read recommending that two members of the Council should be relieved from the personal responsibility they had incurred by borrowing, for the use of Upper Canada College, the sum for which the land set apart in York (Toronto) for the support of a Grammar School had been sold. The University Council assented to this, upon receiving a patent for the land so set apart.

The property referred to was known as part of block D, or Grammar School reservation, which had been occupied by the College while the buildings on Russell Square were being erected. (See Univ. Comr's Report, 1851, p. 352, and Min. Book, vol. 2, p. 136.) The letters and proceedings above referred to, are appended to this report as Appendix No. 1.

Your Committee find that the above agreement between the Lieutenant-Governor and the University Council, was given effect to by several Orders-in-Council dated in 1831 and 1832, and by various patents vesting the whole land endowment of Upper Canada College in the University upon the special trusts set forth in an extract from the Letters Patent appended to this report as Appendix No. 2.

4. These loans to Upper Canada College commenced in 1829 and went on increasing yearly up to 1843, when they amounted, without interest (including the Board's loan hereinafter mentioned), to £42,284 7s. 5d. currency, equal to \$169,137.48, and they represent so much capital abstracted from the University Endowment. The accounts presented to the Legislature show that the University Council occasionally had to resort to Bank discounts to provide for these loans to Upper Canada College. (See Appendix Q.Q. to the Journals, 1846.)

In the general summary of "Expenses and Losses," given in the report of the University Commissioners, presented to Parliament in 1851, it is stated that these loans, with the accrued interest up to the end of 1849, amounted to £75,506 5s. 0d. currency, equal to \$302,025 (pp. 53 and 348). And in reporting on them the Commissioners express their "regret to find that an educational institution so amply endowed by the Legislature and the Crown, as they find Upper Canada College to have been, should have been permitted to trench so largely upon the resources of the University, to the interest and progress of which it was intended to be contributive" (p. 33, see also pp. 35 and 340). And they also intimate that had the affairs of Upper Canada College been properly attended to, its net income might have sustained a charge for the interest on its debt to the University (p. 343).

5. In a report of the Legislative Committee on Education, presented to the House of Assembly in 1833, the practice of making loans to Upper Canada College by the University Council had been similarly condemned: "It appears from evidence and documents on the Journals of your Honorable House, that the Minor or Upper Canada College is greatly indebted to the University of King's College. This fact, obtruding itself on the notice of your Committee, they consider it their duty to bring it under the notice of your Honorable House. * * * How far the University Council is legally authorized, to expend their funds for any other purpose than that of promoting the object for which the Charter and Endowment were granted, your Committee presume not to determine; but with every respect for the members of that Council they feel no hesitation in expressing their decided disapprobation of such a proceeding. Nor do they believe it to be regular, or justified by precedent." (See Appendix, 1832-3, p. 69.)

6. With reference to the explanation given to the House by the Bursar in 1835, above referred to, your Committee find that the Parliamentary Returns show that the General or Provincial Board of Education, which from 1823 to 1832, had the superintendence of the Grammar and Common Schools (for the support of which 190,790 acres had been appropriated), and were also the Government Trustees

of Upper Canada College, also advanced to Upper Canada College on behalf of the Provincial Government, the sum of \$25,571.62 for similar purposes.

In the Returns laid before the House in 1836 (Nos. 18 and 64) these advances, or loans, appear in the Board's accounts as having been made "until the funds of the University of King's College are able to redeem them;" and in 1834-5 they appear to have been so redeemed by sundry payments out of University moneys made by the then Bursar to the Receiver-General "on account of School lands." And in a memorandum appended to the accounts he stated that, "The sums temporarily borrowed from the funds of the late General Board of Education have since been restored, and paid into the hands of the Receiver-General of the Province." In the accounts of 1835 the loans made by the University, and the Board, to Upper Canada College were united, and were carried forward as the "Upper Canada College debt due to the funds of King's College." It appears, therefore, that the Board's loans were redeemed by the University Bursar paying to the Provincial Government in 1834-5, the sum of \$25,571.62, out of the capital of the University Endowment.

7. By the University Act of 1849, 12 Vic. c. 82, s. 68, this large indebtedness of Upper Canada College to the University Endowment was declared to be "absolutely cancelled and discharged." No consideration was given to the University for this legislative receipt for the debt, nor was any compensation made, or property given, by the Legislature, or the Executive Government, to recoup the University this enormous loss of \$302,025 to its endowment; which compensation the University was justly and equitably entitled to,—more especially because it had, on the faith of the Crown, advanced its trust moneys for the benefit of Upper Canada College, and had paid into the Public Treasury another portion of its trust moneys to redeem the loan of \$25,571.62 previously made by the Provincial Government to Upper Canada College, the security for the repayment of which, as well as its own loans, had been confirmed to the University by Orders-in-Council and Letters Patent.

8. Your Committee consider that notwithstanding this legislation of 1849, the University has a claim on the good faith and honour of the Crown to recoup the University out of the balance of the ungranted endowment of 132,483 acres set apart for the University in 1797, and recognized by the Executive Government of Upper Canada in 1813, 1828 and 1830. (See University Commissioner's Report 1851, p. 16, 17 and 18; Appendix to the Journal, 1831, pp. 105-9; Sessional Papers, 1881, No. 31, p. 2.)

9. The facts stated in this Report will show how the University has dealt with Upper Canada College; and your Committee concur in the remarks of the late Minister of Education that "the record of the College has been one of much educational usefulness; and from the nature of its work, it has performed an important and beneficial part in the higher education of the youth of this Province, and during its existence of half a century, it has had an important influence upon our national character." (Sess. Paper No. 31 [1881], p. 2). But, while conceding this, your Committee submit that it was not just to the important claims of University education that a large portion of an endowment specially dedicated by the Crown, and charged with the trust and duty of providing for the higher branches of Literary and Scientific Education, should have been diverted to subordinate educational purposes. And it is submitted that if the endowment of Upper Canada College was insufficient for the educational work it was established to perform, its claims should have been recognized and dealt with by the Legislature and Government which were responsible for its establishment.

And in support of this view the Report of the Legislative Committee on Education, previously referred to, may be cited:—"In regard to the support of Upper Canada College, your Committee entertain no doubt that on a respectful representation to His Majesty's Government, an endowment will be granted to

that Seminary as a separate and Royal gift, exclusive of the school lands originally set apart for the University and District Grammar Schools. It is, indeed, manifest from the spirit of the letter of the Duke of Portland, in 1797, that further grants would have been cheerfully made had they been requested and deemed necessary. And surely there is no reason to doubt but that His Majesty's present Government is as willing now, as it was then, to comply with the prayer of the Legislature for further appropriations for the education of our now great and increasing population. And how can the waste lands of the Crown be more usefully disposed of than in promoting public instruction and establishing beneficial institutions." (Appendix, 1832-3, p. 59.)

Your Committee find that the land endowment of Upper Canada College consisted of 66,000 acres of land (or 63,966 acres, owing to shortages), and some lots in Toronto, including the site of the College (formerly Russell Square) on King street. And its income was supplemented by an annual grant of £1,000 sterling up to 1859. The capital of the endowment, exclusive of the Toronto properties, was estimated by the Bursar in 1856, at \$291,325: (see Appendix 1856, No. 11, item 3); and by the Minister of Education in 1881, at \$236,658: (see Sessional Papers 1881, No. 31, p. 2).

10. Your Committee also find that notwithstanding the disapproval of the practice of making loans to Upper Canada College out of University funds, as expressed in the Reports of 1833 and 1851, above referred to, and which had resulted so disastrously to the University in 1849, the Government of the late Province of Canada by an Order in Council dated May, 1860, ordered payment of the sum of \$4,444.42 to Upper Canada College out of the University Surplus Income Fund. This sum appears to have been paid by the then Bursar to Upper Canada College on the 13th June, 1860; and in intimating his obedience to the Order in Council, he added that as, by the Statute, the University Surplus Income Fund was at the disposal of Parliament, he presumed it was "the intention of the Government to introduce a law during next session to confirm the appropriation." No such law was ever passed, nor was the money thus taken from the University Endowment ever appropriated, or voted, by Parliament to Upper Canada College. The Order in Council is appended to this Report as Appendix No. 3.

The then University Act, C. S. U. C. c. 62, created a "General Income Fund," composed of the respective incomes of the University and Upper Canada College (s. 75). The income of the latter institution was defined to be that derived from the property of its Corporation and was designated the "Special Income Fund" of Upper Canada College (s. 77). The remainder of the General Income Fund was designated the "University Income Fund," and the Governor-in-Council was authorized to appropriate out of it whatever sums should be required for the current expenses of the University and University College (s. 78). The Act then provided that "any surplus of the University Income Fund remaining at the end of any year, after defraying the expenses payable out of the same, shall constitute a fund to be from time to time appropriated by Parliament for academical education in Upper Canada" (s. 81.) By the present University Property Act, R. S. O. c. 231, s. 22, this "Surplus Income Fund" is declared to be the permanent property of the University.

11. Your Committee, after much deliberation, submit that under the statutory provisions then governing the appropriation of this "Surplus Income Fund," it was not within the prerogative of the Governor-in-Council to authorize the Bursar to pay any moneys out of that fund to Upper Canada College, without the previous sanction of Parliament; and that, as there was no Parliamentary authority for such payment, the University should claim that this sum of \$4,444.42, so improperly or improvidently taken out of the University moneys, is a debt or liability of the late Province of Canada; and that steps should be taken to have the same refunded to the University Endowment, with interest thereon from the 13th June, 1860.

12. Your Committee also find that on the 12th November, 1857, a loan of \$4,000, and on the 31st December, 1857, a further loan of \$2,000, were made to Upper Canada College out of the University funds; that these loans (\$6,000) were repaid to the University on the 10th June, 1859, but without interest. Your Committee submit that the University was, and still is, entitled to recover the interest on these loans for the period they were current.

13. Your Committee also report that by recent legislation, 55 Vic. c. 63, the former site of Upper Canada College, known as Russell Square, is vested in the Crown, and may be transferred to the University subject to the following charges on the rents and profits, and the proceeds of all sales thereof according to the following priorities:

(1) Expenses of management and administration, and any local improvement burdens payable by the University, with interest thereon at four and a-half per cent. per annum.

(2) Advances made out of University funds, amounting to \$56,053.15, to pay the balance due by Upper Canada College, in respect of the erection and equipment of the buildings for the College, with interest thereon from the 30th June, 1892, at four and a-half per cent. per annum.

(3) An endowment fund of \$100,000, for Upper Canada College, with interest thereon at four and a-half per cent. per annum, as specified in the Act.

All which is respectfully submitted.

THOMAS HODGINS,
Chairman.

UNIVERSITY OF TORONTO,
1st March, 1895.

APPENDIX No. 1.—Proceedings of the University Council respecting the security for the loans to Upper Canada College.

Saturday, 18th June, 1831.

The following communication from His Excellency the Lieutenant-Governor was read:—

“GOVERNMENT HOUSE, 2nd June, 1831.

“SIR,—I am directed by the Lieutenant-Governor to transmit to you the annexed copy of a letter to the Commissioner of Crown Lands from which the College Council will perceive that all sums accruing from the sales of land set apart as an endowment for Upper Canada College and Royal Grammar School have been ordered by his Excellency to be paid into the hands of the Bursar of King's College till the revenue of Upper Canada College is sufficiently increased to bear the expenses of its present establishments.

“I have, etc.

(Signed) “Z. MUDGE.”

(Enclosure.)

“GOVERNMENT HOUSE, 2nd June, 1831.

“SIR,—His Majesty's Secretary of State for the Colonies having in his Despatch authorized a township to be set apart as an endowment for Upper Canada College and Royal Grammar School, I am directed by the Lieutenant-Governor to acquaint you that His Excellency requests that you will take under your charge the blocks of land appropriated in conformity to the annexed copy of an Order in Council for this purpose, and that they may be sold for the benefit of the institution; and as certain expenses, incurred by the trustees of Upper Canada College, have been defrayed from the funds of King's College, and as advances from time to time will be sanctioned by the College Council till the

revenue of Upper Canada College is sufficiently increased to bear the current expenses of the present establishment, I am also to desire that you will pay into the hands of the Bursar of King's College the amount of the proceeds of the sales of land, effected on account of Upper Canada College.

"I have, etc.,

(Signed) "Z. MUDGE.

"The Hon. P. ROBINSON,

"Commissioner of Crown Lands."

The Council of King's College, having deliberated upon the above letters, were of opinion that the more convenient arrangement would be that the Government should transfer by Patent to the Corporation of King's College, such portion of the 66,000 acres which His Excellency has proposed to direct the Crown Lands Commissioner to dispose of for the purpose of replacing the advance which the Corporation of King's College has made in aid of Upper Canada College, as may be estimated to be equal in value to the debt incurred. And that whatever advance may be necessary in future years, in aid of Upper Canada College, will be made by King's College, to be repaid in like manner by lands to be taken upon a valuation in each year, unless these payments can be otherwise secured.

In making this suggestion, however, the College Council think it proper to add that they have no objection to offer on the part of King's College to the arrangement first proposed by His Excellency, of conveying the endowment of Upper Canada College to the institution, the King being declared trustee by an instrument under the Great Seal, and empowering King's College Council to sell the land, until the endowment shall be sufficient to support the institution after paying the debt due to King's College. It is in reference only to the proposition last made by His Excellency the Lieutenant-Governor, that the College Council would urge the course they have now suggested as more secure and satisfactory. (Min. Book, vol. 1, pp. 174-6).

Thursday, 28th July, 1831.

The following communication from His Excellency the Lieutenant-Governor, Sir John Colborne, was read:—

"The Lieutenant-Governor with reference to a former communication on the subject of the lands set apart for the Upper Canada College and Royal Grammar School, and to the measures proposed by the College Council in their minute of the 18th June, suggests the following arrangement should be adopted, viz.: That King's College, in the first instance, shall hold in trust 20,000 acres of the lots ordered by His Majesty's Government, to be set apart for the support of Upper Canada College, till all sums advanced by King's College shall have been repaid to that Corporation. That King's College shall have full power to create a revenue for Upper Canada College till all sums advanced by King's College shall have been repaid to that Corporation. That King's College shall have power to create a revenue for Upper Canada College; to sell the lands set apart for the support of Upper Canada College; to defray from the proceeds of the sale of these lands the current expenses of Upper Canada College, and to replace such sums as have been advanced by King's College, or shall be advanced, on account of the buildings or expenses of Upper Canada College.

"By adopting this course, King's College Council will become gradually the Trustees of the endowment, and the wild land tax cannot be demanded for any part of the 66,000 acres.

(Signed) "J. C.

"GOVERNMENT HOUSE, 25th July, 1831."

After deliberation, the Council adopted the following resolutions:

That the Council accedes to the arrangements suggested by His Excellency the Lieutenant-Governor, conceiving it to be the intention of His Excellency, that the 20,000 acres spoken of are to be granted by patent to the Corporation of King's College, upon the trusts mentioned in His Excellency's letter; and that with respect to the residue of the 66,000 acres, the College Council shall assume the agency of disposing of it for the purposes stated by His Excellency, the title to the land remaining, as at present, vested in the Crown until patents, from time to time, shall issue to the Corporation for such tracts as will cover the contracts of sale which the College Council shall have entered into, through the Bursar, in order to enable them to make deeds to the respective purchasers.

The following communication was also read:

"The Lieutenant-Governor acquaints the College Council, that it appears desirable that the deeds of the land which was set apart in this town for the support of a Grammar School, should be placed in possession of the Council, and that the Archdeacon of York and Colonel Wells, should be relieved from the personal responsibility which they have incurred, by borrowing, for the use of Upper Canada College, the sum for which the land in question was sold."

"GOVERNMENT HOUSE, 27th July, 1831."

The Board having inquired of the Bursar relative to the sales of the school reservation alluded to, acceded to the proposition of His Excellency; and upon receiving a patent for the land which was set apart in this town for the support of a Grammar School, will assume the responsibility now held by the Archdeacon of York and Lieut.-Col. Wells, as suggested by His Excellency. (Min. Book, vol. 1 pp. 177-180.)

Saturday, 16th March, 1833.

The following communication from His Excellency was read:—

"GOVERNMENT HOUSE, 9th March, 1833.

"SIR,—I am directed by the Lieutenant-Governor to state for the information of the Council of King's College, that a deed for 18,000 acres of land has been transmitted to the Secretary and Registrar of this Province, part of the endowment sanctioned by His Majesty's Government for the support of Upper Canada College. His Excellency considers that the interests of both institutions would be advanced by the remainder of the lands set apart for Upper Canada College being disposed of through the agency of King's College Council, and requests to know whether the Council will consent to authorize the lots to be sold by the Bursar for the benefit of Upper Canada College.

"I have, etc.,
(Signed) "WM. ROWAN."

It was resolved that His Excellency's recommendation, communicated in Lieutenant-Colonel Rowan's letter of the 9th instant, "that the remainder of the lands set apart for Upper Canada College be disposed of through the agency of King's College Council," be accepted and carried into effect; and the Bursar is hereby authorized to sell the said lands for the benefit of Upper Canada College. (Min. Book, vol. 1, p. 192, 4.)

APPENDIX No. 2.—Extracts from the Letters Patent granting the lands for the endowment of Upper Canada College to the University in trust to secure the loans made to the College.

"WHEREAS we have heretofore thought fit to direct that the lands and tenements hereinafter mentioned and described whereof we are seized in right of Our Royal Crown, should amongst other lands be set apart and appropriated for the support and endowment of Upper Canada College and Royal Grammar School. AND WHEREAS the Chancellor, President, and Scholars of King's College at York, in our said Province of Upper Canada, have, from time to time, advanced divers large sums of money for the purposes of the said Upper Canada College and Royal Grammar School which it was agreed should be charged and chargeable upon the lands which we have been pleased to appropriate for the support of the said College and School, and we being willing to ratify and confirm the said agreement and to secure the repayment of the said sums of money so advanced, or which may be hereafter advanced as aforesaid, have consented to grant to the said Chancellor, President, and Scholars of King's College the lands hereinafter described, upon the trusts hereinafter mentioned. Now, know ye, that we of our special grace, certain knowledge, and mere motion, have given and granted, and by these presents do give and grant unto the Chancellor, President, and Scholars of King's College at York, in the Province of Upper Canada, and to their successors forever, all those several parcels or tracts of land situate in our said Province, and containing by admeasurement (describing the lots) * * To have and to hold the said lands and premises unto the said Chancellor, President, and Scholars of King's College at York, in the Province of Upper Canada aforesaid, and to their successors forever, in trust to sell the same, and apply the proceeds thereof towards the repayment of all sums which have been, or may hereafter be, advanced by the Corporation of King's College aforesaid, in aid of the said College of Upper Canada and Royal Grammar School."

APPENDIX No. 3.—Order of the Governor-General in Council, No. 340, dated 22nd May, 1860, granting \$4,444.42 out of the University Surplus Income Fund to Upper Canada College.

"The Committee have had before them a memorandum dated 18th May, 1860, from the Honourable the Solicitor-General, Upper Canada, stating that the annual legislative grant to Upper Canada College of \$4,444.42 has, this session, been discontinued. That no provision has been made in view of so large a deduction from its income. That, consequently, the funds at the disposal of the Institution are not sufficient to meet the current expenses of the present year,—expenses incurred upon the faith of receiving the usual annual appropriation, and unless relief is afforded great embarrassment will result.

"That a large amount is standing to the credit of the University Surplus Fund, which Fund, under the University Act, is applicable to Academic Education in Upper Canada.

"That he would therefore recommend that an amount equal to the former annual appropriation, viz: \$4,444.42, be granted from such Surplus Fund to Upper Canada College to enable it to meet the expenses of the current year. That he would also further suggest that, as the Income Fund of Upper Canada College will hereafter, in all probability, be insufficient to meet the annual expenditure under its present system and management; and as it is considered practicable to reduce the expenses of the Institution, without impairing its efficiency, the subject be brought under the notice of the Chancellor of the University, and it be intimated to him for the information of the Senate, that the Government cannot hold out any encouragement that any further appropriation will be made by Parliament in aid of Upper Canada College, and that the College, after this year, must depend upon its Endowment and tuition fees for support.

"The Committee advise that the above suggestions of the Solicitor-General be approved and acted on."